

REMARKS

Claims 1, 2 and 4-7 were examined and reported in the Office Action. Claims 4-7 are withdrawn from consideration. Claims 1 and 2 are rejected. Claims 4-7 are canceled. New claims 8 and 9 are added. Claims 1 and 2 are amended. Claims 1-2 and 8-9 remain. Applicant requests reconsideration of the application in view of the following remarks.

I. 35 U.S.C. §102

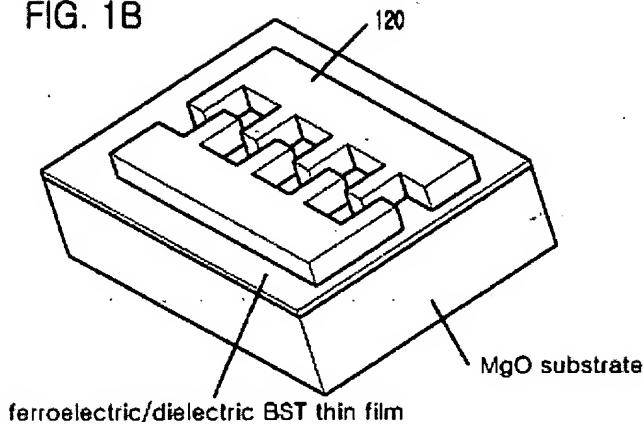
A. It is asserted in the Office Action that claims 1 and 2 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,806,553 issued to Yashima et al ("Yashima"). Applicant respectfully traverses the aforementioned rejection for the following reasons.

According to MPEP §2131, "'[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.' (Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). 'The identical invention must be shown in as complete detail as is contained in the ... claim.' (Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. (In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990))."

Applicant's amended claim 1 contains the limitations of "[a]n apparatus comprising: a microwave tunable device is included in a phase array antenna system, the microwave tunable device including: a MgO substrate; a ferroelectric/dielectric (Ba_{1-x}Sr_x)TiO₃ (BST) thin film oriented in a (111) direction which is formed on the MgO substrate, wherein x is a number and represents a composition ratio; and an electrode pattern formed on the ferroelectric/dielectric BST thin film."

Applicant's claimed invention includes a microwave tunable device has a structure as shown in Fig. 1B as follows:

FIG. 1B



Yashima discloses a variable capacitor. The capacitor can have an MgO substrate, BaTiO₃, SrTiO₃ (Ba Sr) TiO₃ thin film dielectric material. Yashima, however, does not teach, disclose or suggest (anywhere in the patent) "a microwave tunable device is included in a phase array antenna system." Moreover, the structure of the device in Yashima is such that it is not a microwave tunable device.

Therefore, since Yashima does not disclose, teach or suggest all of Applicant's amended claim 1 limitations, Applicant respectfully asserts that a *prima facie* rejection under 35 U.S.C. §102(e) has not been adequately set forth relative to Yashima. Thus, Applicant's amended claim 1 is not anticipated by Yashima. Additionally, the claim that directly depends from Applicant's amended claim 1, namely claim 2, is also not anticipated by Yashima for the same above reason.

Accordingly, withdrawal of the 35 U.S.C. §102(e) rejection for claims 1 and 2 is respectfully requested.

B. It is asserted in the Office Action that claims 1 and 2 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,739,563 issued to Kawakubo et al ("Kawakubo"). Applicant respectfully traverses the aforementioned rejection for the following reasons.

Kawakubo discloses a ferroelectric type semiconductor device including an MgO layer as a substrate, Pt layer formed on the MgO layer and a BaSrTiO layer formed on the Pt layer. Kawakubo, however, does not teach, disclose or suggest "a microwave tunable device." Moreover, Kawakubo does not teach, disclose or suggest "a microwave tunable device is included in a phase array antenna system."

Therefore, since Kawakubo does not disclose, teach or suggest all of Applicant's amended claim 1 limitations, Applicant respectfully asserts that a *prima facie* rejection under 35 U.S.C. §102(b) has not been adequately set forth relative to Kawakubo. Thus, Applicant's amended claim 1 is not anticipated by Kawakubo. Additionally, the claim that directly depends from Applicant's amended claim 1, namely claim 2, is also not anticipated by Kawakubo for the same above reason.

Accordingly, withdrawal of the 35 U.S.C. §102(e) rejection for claims 1 and 2 is respectfully requested.

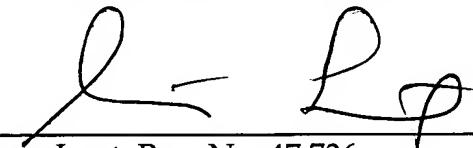
CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely 1-2 and 8-9, patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees. If a telephone interview would expedite the prosecution of this Application, the Examiner is invited to contact the undersigned at (310) 207-3800.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail with sufficient postage in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia 22313-1450 on August 17, 2005.


Jean Svoboda